

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

KYLE LAMAR McCLELLAN,

Defendant-Appellant.

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UNPUBLISHED

May 11, 2006

No. 259392

Wayne Circuit Court

LC No. 03-002926-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

MEMORANDUM.

Defendant was convicted by a jury of two counts of felonious assault, MCL 750.82, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to concurrent terms of one to four years for felonious assault, and to a consecutive two-year term for felony-firearm. Defendant appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the trial court abused its discretion by denying his motion for a new trial on the ground that the verdict was against the great weight of the evidence. Defendant asserts that the testimony given by police witnesses was so inconsistent and filled with discrepancies that the credibility of such testimony was severely compromised. We disagree.

We review a trial court's decision on a motion for a new trial for an abuse of discretion. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). A trial court may not grant a new trial unless it finds the verdict was not in accordance with the evidence and that an injustice has occurred. *People v Hampton*, 407 Mich 354, 373; 285 NW2d 284 (1979). A reviewing court will find an abuse of discretion in the denial of a motion for a new trial only where the verdict was "manifestly against the clear weight of the evidence." *People v Stiller*, 242 Mich App 38, 49; 617 NW2d 697 (2000).

The arresting officers testified concerning the events that led to defendant's arrest. While there were inconsistencies in their testimony regarding such things as which hand defendant used in grabbing the AK-47, or where certain individuals were arrested, such discrepancies cannot be said to have negated all probative value of the testimony. Moreover, the testimony produced by defendant at trial was not without inconsistencies. It cannot be said that, as a matter of law, the testimony of the officers was deprived of all probative value or that the jury could not believe the

credibility of the witnesses. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1988). Further, “conflicting testimony, even when impeached to some extent, is insufficient ground for granting a new trial.” *Id.* at 647. Accordingly, the trial court did not abuse its discretion by denying defendant’s motion for a new trial.

Affirmed.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot